

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0253

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSHUA HAWKEYE LEWIS,

Defendant and Appellant.

FILED

APR 29 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

NOTICE OF CONCESSION

On August 29, 2007, a justice court jury found Joshua Hawkeye Lewis (Lewis) guilty of violating an order of protection, a misdemeanor. On September 11, 2007, Lewis filed a notice of appeal, requesting a trial *de novo* in the district court. On December 5, 2008, a district court jury found Lewis guilty of violating an order of protection. (D.C. Doc. 59; Tr. at 300.) After the polling of the jury, Lewis moved for a mistrial based in part on one juror's initial comment that he did not agree with the verdict. (Tr. at 300-03.) The district court denied Lewis's motion for a mistrial. (Tr. at 304.)

Prior to trial, Lewis filed a motion to dismiss for lack of a speedy trial. (D.C. Doc. 4.) On November 10, 2008, the district court denied Lewis's motion to dismiss. (D.C. Doc. 36.)

On appeal, Lewis argues that the district court erred in denying his motion to dismiss for lack of a speedy trial. In addition, Lewis argues that the district court erred in denying his motion for a mistrial. Lewis maintains that the district court

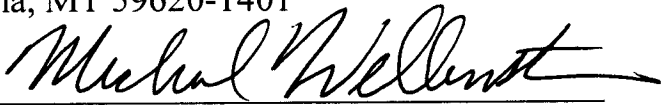
improperly questioned a polled juror and incorrectly concluded that the verdict was unanimous.

Although the State does not agree with all of the contentions advanced in Lewis's Appellant's Brief, the State concedes that the district court should have granted Lewis' motion to dismiss as well as his motion for a mistrial. The State agrees with Lewis that this Court should reverse Lewis' conviction and dismiss the case.

Counsel for Lewis has been contacted concerning the State's concession, but opposing counsel has been unable to contact Lewis concerning the concession.

Respectfully submitted this 29th day of April, 2010.

STEVE BULLOCK
Montana Attorney General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401

By: 
MICHEAL S. WELLENSTEIN
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Notice of Concession to be mailed to:

Mr. Chris Christensen
Madison County Attorney
P.O. Box 73
Virginia City, MT 59755-0073

Ms. Joslyn Hunt
Chief Appellate Defender
(Hand-delivered into the wire basket located in the
reception area in the Attorney General's Office,
215 North Sanders, Helena, MT 59620.)

DATED: April 29, 2010 Michael Willent